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8 SIMPSON STRONG-TIE COMPANY  
9 INC.,

10 Plaintiff,

11 v.

12 MITEK INC.,

13 Defendant.

14 Case No. 20-cv-06957-VKD

15 **ORDER RE PARTIES'**  
16 **ADMINISTRATIVE MOTIONS TO**  
17 **FILE UNDER SEAL**

18 Re: Dkt. Nos. 66, 73, 75, 89, 90, 96, 99,  
19 104, 110

20 Before the Court are the parties' administrative motions to file under seal certain materials  
21 submitted in support of the parties' respective motions for summary judgment and *Daubert*  
22 motions. The sealing motions are granted in part and denied in part for the reasons discussed  
23 below.

24 **I. LEGAL STANDARD**

25 “Historically, courts have recognized a ‘general right to inspect and copy public records  
26 and documents, including judicial records and documents.’” *Kamakana v. City and Cnty. of  
Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435  
U.S. 589, 597 & n.7 (1978)). Consequently, filings that are “more than tangentially related to the  
merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for  
Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th Cir. 2016). “[T]he strong  
presumption of access to judicial records applies fully to dispositive pleadings, including motions  
for summary judgment and related attachments.” *Kamakana*, 447 F.3d at 1179.

27 Sealing motions in this district also must be “narrowly tailored to seek sealing only of  
28 sealable material.” Civil L.R. 79-5(c)(3). A party moving to seal a document in whole or in part

1 must explain “why a less restrictive alternative to sealing is not sufficient.” Civil L.R. 79-  
2 5(c)(1)(iii). “Reference to a stipulation or protective order that allows a party to designate certain  
3 documents as confidential is not sufficient to establish that a document, or portions thereof, are  
4 sealable.” Civil L.R. 79-5(c).

5 Where the moving party requests sealing of documents because they have been designated  
6 confidential by another party or a non-party under a protective order, the burden of establishing  
7 adequate reasons for sealing is placed on the designating party or non-party. Civil L.R. 79-5(f)(1),  
8 (3). “Within 7 days of the motion’s filing, the Designating Party must file a statement and/or  
9 declaration as described in subsection (c)(1),” or else the provisionally sealed document may be  
10 unsealed without further notice to the Designating Party. Civil L.R. 79-5(f)(3). In addition,  
11 “overly broad requests to seal may result in the denial of the motion.” Civil L.R. 79-5(f)(6).

## 12 **II. DISCUSSION**

13 Because the parties’ sealing motions principally relate to their respective motions for  
14 summary judgment the Court finds that the compelling reasons standard applies. The Court’s  
15 rulings on the sealing motions are set forth below.

### 16 **A. Plaintiff Simpson’s Administrative Motions**

17 Simpson filed three administrative motions to seal. Simpson’s first administrative motion  
18 (Dkt. No. 89)<sup>1</sup> pertains to its motion for summary judgment and *Daubert* motion, and Simpson’s  
19 confidential information included in the exhibits referenced in those two motions. Simpson’s first  
20 motion also addresses documents for which MiTek is the designating party.<sup>2</sup> *See* Dkt. No. 89 at 2.  
21 Simpson’s second and third administrative motions (Dkt. Nos. 96, 104) pertain to its opposition to  
22 MiTek’s motion for partial summary judgment, and its reply brief in support of its own motion.

23 In connection with its motion for summary judgment, Simpson asks the Court to seal

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25 <sup>1</sup> Dkt. No. 89 is a corrected version of Dkt. No. 66.

26 <sup>2</sup> Simpson should have separately filed an administrative motion to consider whether another  
27 party’s material should be sealed pursuant to Civil Local Rule 79-5(f). Because MiTek  
28 nevertheless responded to Simpson’s motion (Dkt. No. 90), the Court construes Dkt. No. 89 as a  
motion pursuant to both Civil Local Rule 79-5(c), for material Simpson seeks to seal, and a  
motion pursuant to Civil Local Rule 79-5(f), for material MiTek has designated confidential.

1 several exhibits it has designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes  
2 Only” under the parties’ stipulated protective order (Dkt. No. 36). Specifically, Simpson asks the  
3 Court to seal, in their entirety, Exhibits 78, 80, 83, 84, 85, 86, 132, 133, 136, and 138. *See* Dkt.  
4 No. 89-1 ¶ 32. According to Simpson, these exhibits contain “the confidential intellectual  
5 property, business development and internal business strategy documents of Simpson, including  
6 internal Simpson research and development correspondence.” Dkt. No. 89 at 2.

7 Simpson has not demonstrated compelling reasons to seal these exhibits in their entirety.  
8 Civil Local Rule 79-5(a) requires a party to “avoid wherever possible sealing entire documents (as  
9 opposed to merely redacting the truly sensitive information in a document).” The designating  
10 party’s statement must comply with Civil Local Rule 79-5(c)(1), which requires explaining (1)  
11 “the legitimate private or public interests that warrant sealing”; (2) “the injury that will result if  
12 sealing is denied”; and (3) “why a less restrictive alternative to sealing is not sufficient.” Further,  
13 Civil Local Rule 79-5(c) instructs that “[r]eference to a stipulation or protective order that allows a  
14 party to designate certain documents as confidential is not sufficient to establish that a document,  
15 or portions thereof, are sealable.” The declaration filed by Simpson’s counsel does not explain  
16 why a less restrictive alternative to sealing the entirety of Simpson’s Exhibits 78, 80, 83, 84, 85,  
17 86, 132, 133, 136, and 138 is not sufficient. *See* Dkt. No. 89-1. Simpson has not shown that its  
18 interests can only be protected by sealing these exhibits in their entirety, particularly because less  
19 restrictive alternatives, such as sealing only portions of these exhibits, may be available to address  
20 its concerns.

21 Simpson also asks the Court to consider whether MiTek’s material that is cited in  
22 Simpson’s motion for summary judgment and *Daubert* motion should be sealed. Dkt. No. 89.  
23 Simpson says that these documents are each “asserted by MiTek to be its confidential business  
24 development, research and financial-related documents, including internal business development  
25 and strategy correspondence.” *Id.* at 2. For each of these exhibits designated “Confidential” or  
26 “Highly Confidential – Attorneys’ Eyes Only,” Simpson does not argue that the exhibits should be  
27 filed publicly despite MiTek’s confidentiality designations, but it “reserves its rights to challenge  
28 the designation as may be appropriate.” *See, e.g.*, Dkt. No. 89-1 ¶ 3.

1 MiTek responds to Simpson's motion pursuant to Civil Local Rule 79-5(f). Dkt. No. 90.  
2 MiTek does not object to publicly filing Exhibits 5, 226, or 227 in their entirety, and does not  
3 object to publicly filing portions of Exhibits 3 and 14. Dkt. No. 90 at 2, n.1; Dkt. No. 91 ¶ 4.  
4 MiTek asks the Court seal Exhibits 2, 7, 11, 12, 13, 17, 46, 221 and Exhibit H in their entirety, and  
5 asks the Court to seal limited portions of Exhibits 3, 14, 305, A, C, D, and J. *Id.* at 2-3. MiTek  
6 also asks the Court to seal portions of Simpson's motion for summary judgment. *Id.* MiTek  
7 explains that the materials proposed to be sealed reflect "confidential business development and  
8 internal business strategy documents and intellectual property of MiTek, including internal MiTek  
9 research and development information" or "confidential settlement documents." *Id.* at 4. MiTek  
10 argues that if these materials were made public, the parties' commercially-sensitive and bargaining  
11 positions would be directly and irremediably compromised by its disclosure in the public record.  
12 *Id.* MiTek argues that this concern is particularly salient here because the parties are direct  
13 competitors. *Id.* at 5. MiTek argues that the confidential material is not essential to the Court's  
14 determination of the parties' motions, and so the potential competitive harm from disclosure  
15 outweighs the public's interest in accessing the information. *Id.* Finally, MiTek's counsel asserts  
16 that the redactions are narrowly tailored and that no less restrictive means exist to protect MiTek's  
17 interests. Dkt. No. 91 ¶ 11.

18 MiTek has shown compelling reasons for sealing this material and has complied with the  
19 requirements of the local rules. Accordingly, the following portions of Exhibits 3, 14, 305, A, C,  
20 D, J, and Simpson's motion for summary judgment may be filed under seal and redacted from the  
21 public versions of these documents:

Document	Sealed Portions
Exhibit 3	MITEK0161640-MITEK0161643
Exhibit 14	MITEK0140618-MITEK0140624 and MITEK0140626-MITEK0140628
Exhibit 305	Paragraph 1, p. 44
Exhibit A	79:5-22, 82:16-84:7, 84:16-88:3, 139:22-140:2, 193:13-194:10, 312:17-319:12, 322:25-323:23,

1	340:16-342:3, 342:15-18, 342:22-344:20, 345:12-14, 347:5-349:6, and 349:21-353:11
2	Exhibit C 67:10-73:3 and 206:17-210:15
3	Exhibit D 116:14-121:5
4	Exhibit J 189:5-8, 191:2-3, and 191:5-10
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6	Simpson MSJ 2:13-16, 6:13-24, 6:14-17, 11:3-15, 14:6-15:10, 15:12- 16:10, 21:6-8, 21:10-12, 22:3-11, 23:9-13, 32:10-20, 33:16-18, 36:4-7, 37:17-18, 38:20-39:1, 39:3-5, 39:7-12, 39:19-28, 40:7-14, and 40:17-20 (as highlighted in Dkt. No. 89-32)
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9 *See* Dkt. No. 90 at 2-3. In addition, Exhibits 2, 7, 11, 12, 13, 17, 46, 221 and Exhibit H shall be  
10 sealed in their entirety.

11 Simpson also asks that the Court seal portions of its opposition to MiTek's motion for  
12 partial summary judgment and its reply brief in support of its own motion for summary judgment.  
13 Simpson says that the material it seeks to seal concerns the terms of, interpretation of, and  
14 communications surrounding the confidential settlement of a 2013 trademark infringement lawsuit  
15 Simpson filed against MiTek, Inc. Dkt. No. 96 at 2; Dkt. No. 104 at 2. Simpson argues that it has  
16 a contractual obligation to maintain the confidentiality of this settlement-related material, and that  
17 public disclosure could harm the parties' interests. Dkt. No. 96 at 2; Dkt. No. 104 at 2.

18 Here, Simpson has demonstrated compelling reasons for sealing limited portions of its  
19 opposition and reply briefs. The following portions of these briefs may be filed under seal and  
20 redacted from the public versions of these documents:

Document	Sealed Portions
Simpson Opposition Brief	2:3-10, 2:12, 20:9-13, 20:14-21, 20:23-26, 21:14-23, 21:26-22:2, 22:5-10, 22:22-26, 22:28-23:4, 23:6-24, 26:16-18
Simpson Reply Brief	20:6-7, 20:8-13, 20:15-17, 20:18-19, 20:20-22

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28 *See* Dkt. No. 96-1 ¶ 3; Dkt. No. 104-1 ¶ 3.

1 The Court orders as follows:

2 1. The Court denies, without prejudice, Simpson's administrative motion to seal in their  
3 entirety Exhibits 78, 80, 83, 84, 85, 86, 132, 133, 136, and 138. If Simpson wishes to  
4 file these exhibits under seal, it must file a statement or declaration that complies with  
5 the requirements of Civil Local Rule 79-5 by **January 27, 2023**.

6 2. The Court grants the motion to seal Exhibits 2, 7, 11, 12, 13, 17, 46, 221 and H in  
7 their entirety.

8 3. The Court grants the motion to seal limited portions of Exhibits 3, 14, 305, A, C, D,  
9 and J. MiTek must file redacted versions of these exhibits on the public docket by  
10 **January 27, 2023**.

11 4. As MiTek agrees no sealing is required, MiTek must file Exhibits 5, 226, and 227 on  
12 the public docket by **January 27, 2023**.

13 5. The Court grants the motion to seal limited portions of Simpson's motion for  
14 summary judgment (Dkt. No. 88), opposition (Dkt. No. 97), and reply brief (Dkt. No.  
15 105). As redacted versions of these materials have already been filed on the public  
16 docket, no further action is required.

17 **B. Defendant MiTek's Motions**

18 MiTek filed five administrative motions related to sealing. However, one submission  
19 appears to have been made in error. The motion at Dkt. No. 73 and Dkt. No. 75 are identical. The  
20 Court understands Dkt. No. 75 to be MiTek's motion to consider whether Simpson's materials  
21 should be sealed: Dkt. No. 75 has one attachment clearly corresponding to Simpson's designated  
22 material in Exhibit 8. Dkt. No. 73, while filed earlier in time, appears to have been filed in error  
23 and to be a duplicate of Dkt. No. 75. Dkt. No. 73 has ten attachments which appear to correspond  
24 to MiTek's materials discussed in the declaration filed at Dkt. No. 73-1. The Court will not rule  
25 on the motion at Dkt. No. 73 at this time.

26 MiTek asks the Court to consider whether Simpson's material should be sealed. Dkt.  
27 No. 75. MiTek says that Simpson designated portions (lines 55:1-7 and 103:19-104:18) of Exhibit  
28 8 "Confidential." This material discusses the market share over time of Simpson and MiTek.

1 Simpson, the designating party, did not file a statement or declaration supporting the sealing of  
2 these documents, as Civil Local Rule 79-5(f)(3) requires. The Court is not persuaded that, even if  
3 Simpson had complied with the local rules, it could demonstrate compelling reasons to seal  
4 information. Accordingly, the Court denies the motion to seal Exhibit 8.

5 Finally, like Simpson, MiTek asks the Court to seal limited portions of its opposition to  
6 Simpson's motion for summary judgment and its reply brief in support of its own motion for  
7 summary judgment. Dkt. Nos. 99, 110. MiTek says that this material should be filed under seal  
8 because it is sensitive and confidential information about the parties' previous settlement  
9 agreement. MiTek's arguments regarding this material are the same as the arguments discussed  
10 above and in Dkt. No. 90. Accordingly, the following portions of these briefs may be filed under  
11 seal and redacted from the public versions of these documents:

Document	Sealed Portions
MiTek's Opposition Brief	5:8-6:4, 30:20-23, 30:25-31:2, 37:20-22, 38:5-9, 38:12-18, 38:21, 39:1-9, 39:11-12, 39:15-17, 39:19-26, 40:1-2, 40:10-12 (as highlighted in yellow)
MiTek's Reply Brief	5:8, 7:23-24, 8:2-5, 8:8-11, and 10:13 (as highlighted in yellow)

19 *See* Dkt. No. 99 at 1; Dkt. No. 110 at 2.

20 The Court orders as follows:

21 1. MiTek must file a corrected administrative motion to seal the attachments at Dkt. No.  
22 73 by **January 27, 2023**.

23 2. The Court denies the motion to seal Exhibit 8. MiTek must file an unredacted version  
24 of Exhibit 8 on the public document by **January 27, 2023**.

25 3. The Court grants the motion to seal limited portions of MiTek's opposition (Dkt. No.  
26 100) and reply brief (Dkt. No. 108). As redacted versions of these materials have  
27 already been filed on the public docket, no further action is required.

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1 **IT IS SO ORDERED.**  
2 Dated: January 20, 2023  
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VIRGINIA K. DEMARCHI  
United States Magistrate Judge